IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

WP(C).No. 22564 of 2004(J)

OS.104/1986 of ADDL.MUNSIFF COURT,NEDUMANGAD
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PETITIONER:

PRAVEENKUMAR, S/O. AYYAPPAN NAIR,
PRAMEELA BHAVAN, KACHANI FROM KATTAKAL VEEDU,
KAITHARAKONAM, CHEKKAKONAM MURI, KARAKULAM VILLAGE

BY ADV. SRI.R.S.KALKURA

RESPONDENTS:
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1. **PADMAVATHY AMMA, D/O. BHARATHY AMMA,**
   MANNORA VEEDU, THALIYAL, AYRANIMUTTOM VILLAGE,
   THIRUVANANTHAPURAM.

2. **B.VIJAYAMMA,**
   SREE NILAYAM, PADINJATTUMUKKU, KADINAKULAM.

3. **B.VIJAYASREE,**
   SREE NILAYAM, PADINJATTUMUKKU, KADINAKULAM.

4. **SREEKALA V.,**
   SREE NILAYAM, PADINJATTUMUKKU, KADINAKULAM.

5. **SREELATHA V.,**
   SREE NILAYAM, PADINJATTUMUKKU, KADINAKULAM.

6. **PADMAVATHI AMMA REMANI,**
   MANOR VEEDU, AYRANIMUTTOM VILLAGE.

7. **BHASKARAN NAIR PRATHAPAN,**
   MANOR VEEDU, AYRANIMUTTOM VILLAGE.

8. BHASKARAN NAIR DILEEPKUMAR,
MANOR VEEDU, AYRANIMUTTOM VILLAGE.

9. KARTHIYAYANI AMMA BHARATHY AMMA,
MANOR VEEDU, AYRANIMUTTOM VILLAGE.

10. SYAMALA AMMA, D/O. BHARATHY AMMA,
MANOR VEEDU, AYRANIMUTTOM VILLAGE.

11. S.PRABHAKARAN NAIR,
VARIYAKONATHU VEEDU, CHEKKAKONAM, KARAKULAM.

12. S.BALACHANDRAN NAIR,
VARIYAKONATHU VEEDU, CHEKKAKONAM, KARAKULAM.

13. LEELA, "JAYA BHAVAN",
UDYOGAMANDAL, ELUR NORTH, ALUVA.

14. RAJESH, S/O. JAYACHANDRAN NAIR,
VARIAKONATHU VEEDU, KACHANI, KARAKULAM VILLAGE.

15. GIREESH, S/O. JAYACHANDRAN NAIR,
VARIAKONATHU VEEDU, KACHANI, KARAKULAM VILLAGE.

16. THANKOM, W/O. VENUGOPALAN NAIR,
SUDHASADANAM, PARASSALA, KARADU VILLAGE,
NEYYATTINKARA TALUK.

17. THANKAM PREETHA,
SUDHASADANAM, PARASSALA KARADU VILLAGE,
NEYYATTINKARA TALUK.

18. VENUGOPALAN NAIR PRADEEP,
SUDHASADANAM, PARASSALA KARADU VILLAGE,
NEYYATTINKARA TALUK.

19. BHARATHY AMMA VASANTHAKUMARI,
KAITHRAKONATHU KOTTAKKAL VEEDU, KARAKULAM VILLAGE.

20. SIVAN PILLAI SYAMKUMAR,
KAITHRAKONATHU KOTTAKKAL VEEDU, KARAKULAM VILLAGE.

21. VASANTHAKUMARI SASIKALA,
KAITHRAKONATHU KOTTAKKAL VEEDU, KARAKULAM VILLAGE.

22. BHARATHY AMMA PREMEELA KUMARI,
PREMELA BHAVAN, KACHANI.

23. A.ARUN KUMAR,
PREMELA BHAVAN, KACHANI.

24. B.SANALKUMAR,
PREMELA BHAVAN, KACHANI, NOW WORKING IN KERALA DRUGS AND PHARMACEUTICALS, ALAPPUZHA.

BY ADV. SRI.K.B.PRADEEP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.22564/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE PRELIMINARY JUDGMENT IN OS. NO.10486 DT. 21.3.94.

EXT.P2:- COPY OF THE DECREE IN OS. NO.104/86 DT. 20.2.97.

EXT.P3:- COPY OF THE EXECUTION PETITION FILED BY THE RESPONDENTS DT. 24.6.2000.

EXT.P4:- COPY OF THE MEMORANDUM OF ORDER DT. 3.11.01 IN IA. NO.1044/2000.

EXT.P5:- COPY OF THE JUDGMENT IN CMA. 6/02 ON THE FILE OF THE SUBORDINATE JUDGE'S COURT, NEDUMANGAD.

/TRUE COPY/

P.A. TO JUDGE

tss

PIUS C. KURIAKOSE, J.

W.P.(C) NO.22564 of 2004

Dated this the 6th day of December , 2007

JUDGMENT

16th defendant in a partition suit has filed this writ petition challenging Ext.P5 order of the District Judge declining to interfere with Ext.P4 order of the Trial Court. Ext.P4 order was passed by the trial court on an application under Order 9 Rule 13 C.P.C. filed by the petitioner. As rightly noticed by the Trial Court and the lower appellate court, the petitioner (16th defendant) was never set ex-parte either in the preliminary decree stage or in a final decree stage. What has actually happened was dereliction on the part of the guardian, an advocate of the court, in the matter of reporting to the court that the petitioner had attained majority and in not getting the petitioner's majority recorded so as to enable the petitioner to pursue the defence of the suit on his own. But at the same time, it is to be noticed that the petitioner had no contention at all that the guardian did not protect his interest in the subject matter of the case. The view of the court below that an application under Order 9 Rule 13 of C.P.C. for setting aside the ex-parte decree is maintainable only when an ex-parte

decree has been passed against the applicant cannot be said to be faulty. The court below noticed that the version of the petitioner that he came to have information regarding the pendency of the case only on 3.3.2000 when his mother the 14th defendant received notice from the court is false. The court below noticed that the petitioner, (16th defendant) and his mother 14th defendant are residing under the very same roof. Admittedly there is no conflicting interest between the petitioner and his mother the 14th defendant. The 14th defendant remained ex parte. Being a member of a Marumakkathyam Thavazhi, it is improbable for the petitioner to raise special contention apart from those contentions which could have been raised by his mother 14th defendant. The circumstance that the 14th defendant preferred to remain ex parte will show that she who had interest in conflict with that the petitioner had no valid contentions.

2. The principle memo agit in seipsum will apply and it can be safely concluded that the mother preferred to remain ex parte since she had no sustainable contention to be raised. As rightly held by the court below, litigation has become more than 17 years old, I do not find any reason to doubt the correctness of the view expressed by the court below that the endeavour is only to protract the litigation. I do not find any infirmities about Exts.P4 and P5 warranting interference

by this court in its supervisory jurisdiction under Article 227 of the Constitution. The orders cannot be said to be wholly unreasonable so as to justify such interference.

Challenge against Exts.P4 and P5 fails. The Writ Petition will stand dismissed.

PIUS C. KURIAKOSE,
JUDGE.

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